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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,752	03/30/2000	Jay S. Walker	99-075	8956
22927	7590	07/21/2004	EXAMINER	
WALKER DIGITAL FIVE HIGH RIDGE PARK STAMFORD, CT 06905			RADA, ALEX P	
			ART UNIT	PAPER NUMBER
			3714	
DATE MAILED: 07/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/538,752

Applicant(s)

WALKER ET AL.

Examiner

Alex P. Rada

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on March 30, 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

In response to the amendment filed April 23, 2004 in which the applicants amends claim 1, and claims 1-34 are pending in this office action.

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the program diagram regarding the features in the method claims 1-34 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-4, 19, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Boylan '875.

4. Boylan discloses the following:

Playing a hand in a game of blackjack dealing a first set of cards to a player, dealing a second set of cards to a dealer, determining that the hand of blackjack has resulted in a push, and based on a random outcome, in which the examiner interprets the poker evaluation to be an equivalent to a random outcome to determine determining if the player has won the hand of blackjack (column 2, lines 50 – column 3, line 29) as recited in claim 1.

Receiving from the player a wager amount prior to the determining that the hand of blackjack resulted in the push and determining if the player has won the hand of blackjack and arranging for the player to receive payment of a winning amount based on the wager amount (summary) as recited in claim 2.

Deciding if the push will be resolved as recited in claim 3.

Determining that the hand of blackjack has resulted in the push, the player indication of whether the push will be resolved as recited in claim 4.

Arranging for the player to receive payment of a winning amount as recited in claim 19.

Receiving an indication (verbal) that the hand of blackjack has resulted in a push, and transmitting a random outcome in response to the receiving, in which the examiner interprets the verbal indication based on the poker evaluation by the dealer to be the transmitting (verbally) the random outcome to determine if the player has won the hand of blackjack as recited in claim 33.

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boylan '875 in view of Lofink '064.

7. Boylan discloses the claimed invention as discussed above except for the following:

Displaying an indication of the random outcome to the player as recited in claim 5.

Initiating a random outcome generator and receiving an indication of the random outcome as recited in claim 6.

Generating the random outcome as recited in claim 7.

The generating is performed after the determining that the hand of blackjack has resulted in the push as recited in claim 8.

The generating is performed in response to the determining that the hand of blackjack has resulted in the push as recited in claim 9.

The generating is performed prior to the determining that the hand of blackjack has resulted in the push as recited in claim 10.

The random outcome is statistically independent of the hand of blackjack played prior to the push as recited in claim 11.

The generating is performed using at least one die as recited in claim 12.

The generating is performed using a coin as recited in claim 13.

The generating is performed using a random number generator as recited in claim 14.

The generating is performed using a rotating wheel as recited in claim 15.

The generating is performed using a set of playing cards as recited in claim 16.

The deck of playing cards used is the set of used in the hand of blackjack as recited in claim 17.

The set of playing cards used is a set other than the set used in the hand of blackjack as recited in claim 18.

Lofink teaches the following:

Displaying an indication of the random outcome to the player (column 7, lines 41-51) as recited in claim 5.

Initiating a random outcome generator and receiving an indication of the random outcome (column 7, lines 41-51) as recited in claim 6.

Generating the random outcome (column 7, lines 41-51) as recited in claim 7.

The generating is performed after the determining that the hand of blackjack has resulted in the push (column 11, lines 31-45) as recited in claim 8.

The generating is performed in response to the determining that the hand of blackjack has resulted in the push (column 11, lines 31-45) as recited in claim 9.

The generating is performed prior to the determining that the hand of blackjack has resulted in the push (column 11, lines 31-45) as recited in claim 10.

The random outcome is statistically independent of the hand of blackjack played prior to the push (column 11, lines 31-45) as recited in claim 11.

The generating is performed using at least one die (column 11, line 38-39) as recited in claim 12.

The generating is performed using a random number generator (column 11, lines 31-45) as recited in claim 14.

The generating is performed using a rotating wheel (column 11, lines 31-45) as recited in claim 15. By providing different types of random generated

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devices, one of ordinary skill in the art would provide game players a faster pace game while enticing participation from new game players.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Boylan to include displaying, initiating, and using different random generated devices as taught by Lofink to provide game players a faster pace game while enticing participation from new game players.

At the time the invention was made, it would have been an obvious design choice to a person of ordinary skill in the art to provide different types of random generated outcomes using a coin and a deck of card because Applicant has not disclosed that using a coin or a deck of cards as recited in claims 13 and 16-18 provides an advantage or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the random generated outcomes used as taught by Lofink because they provide the same purpose of providing a random unbiased game result.

8. Claims 20-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boylan '875 in view of Lofink '064 as applied to claim 19 above, and further in view of Long '456.
9. Boylan in view of Lofink disclose the claimed invention as discussed above except for the following:

The winning amount is based at least in part on the random outcome as recited in claim 20.

Displaying the winning amount to the player as recited in claim 21.



The winning amount is based at least in part on at least one of information associated with the player and at least one card accumulated by the player or a dealer in the hand of blackjack as recited in claim 22.

The random outcome has a plurality of states at least two of the plurality of states being associated with different winning amounts as recited in claim 24.

Long teaches the following:

The winning amount is based at least in part on the random outcome (column 4, lines 37-49) as recited in claim 20.

Displaying the winning amount to the player (column 4, lines 37-49) as recited in claim 21.

The winning amount is based at least in part on at least one of information associated with the player and at least one card accumulated by the player or a dealer in the hand of blackjack (column 4, lines 37-49) as recited in claim 22.

The random outcome has a plurality of states at least two of the plurality of states being associated with different winning amounts (column 4, lines 37-49) as recited in claim 24. By having different amounts associated with the random outcome one of ordinary skill in the art would provide game players with a chance at an increased payout.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Boylan to further include winning amount is based at least in part on the random outcome, displaying the winning amount to the player, the winning amount is based at least in part on at least one

of information associated with the player and at least one card accumulated by the player or a dealer in the hand of blackjack, and the random outcome has a plurality of states at least two of the plurality of states being associated with different winning amounts as taught by Long to provide game players with a chance at an increased payout.

10. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boylan '875 in view of Lofink '064 as applied to claim 19 above, and further in view of Feola '432.

11. Boylan in view of Lofink disclose the claimed invention as discussed above except for the following:

The random outcome having a first state indicating that the player has won the hand of blackjack and a second state indicating that the player has not won the hand of blackjack as recited in claim 23.

Feola teaches the following:

The random outcome having a first state indicating that the player has won and a second state indicating that the player did not win (column 2, line 56 – column 3, line 6) as recited in claim 23. By having a random outcome having two states indicating a win or lose, one of ordinary skill in the art would determine a winner or loser in the event of a tie.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Boylan to further include random outcome having a first state indicating that the player has won the hand of blackjack and a second state indicating that the player has not won the hand of blackjack as taught by Feola to determine a winner and loser in the event of a tie.

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12. Claims 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boylan '875.

13. Boylan discloses the following:

Playing a hand in a game of blackjack and determining that the hand of blackjack has resulted in a push, and based on a random outcome, in which the examiner interprets the poker evaluation to be an equivalent to a random outcome to determine determining if the player has won the hand of blackjack (column 2, lines 50 – column 3, line 29) as recited in claims 25-32.

Boylan does not expressly disclose the following:

A plurality of separate or multiple hands has resulted in a push and based on a random outcome, in which the examiner interprets the poker evaluation to be an equivalent to a random outcome to determine determining if the player has won the hand of blackjack, determining if the player has won the hand, a plurality of separate or multiple hands of blackjack, in which the examiner takes the position of playing more than one hand of blackjack to be an equivalent to a plurality of separate or multiple hands as recited in claims 25-32. By playing single or multiple hands of a game and determining the single or multiple hands resulted in none, one, or multiple wins, one of ordinary skill in the art would provide game players a chance at an increased outcome.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Boylan to include playing single or multiple hands and determining the single or multiple hands resulted in none, one, or multiple wins to provide game players with a chance at an increased outcome.

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14. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boylan '875 in view of Lofink '064.

15. Boylan discloses the following:

Receiving a wager amount associated with the hand of blackjack, determining that the hand of blackjack has resulted in a push, based on the random outcome, in which the examiner interprets the poker evaluation to be an equivalent to a random outcome to determine determining if the player has won the hand of blackjack, displaying to the player an indication of at least one of the random outcome and the determination if the player has won the hand of blackjack, and arranging for the player to receive payment of the winning amount based on the wager amount (summary) as recited in claim 34.

Boylan does not expressly disclose the following:

Initiating a random outcome generator and receiving an indication of a random outcome, the random outcome being statistically independent of the hand of the blackjack played prior to the push as recited in claim 34.

Lofink teaches the following:

Initiating a random outcome generator (dice, wheel, or the like) and receiving an indication of a random outcome, the random outcome being statistically independent of the hand of the blackjack played prior to the push (column 11, lines 31-45) as recited in claim 34. By initiating a random outcome generator, one of ordinary skill in the art would determine the winner in the event of a tie.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Boylan to include a random outcome generator and receiving an indication of a random outcome, the random outcome being statistically independent of the hand of the blackjack played prior to the push as taught by Lofink to determine the winner in the event of a tie.


### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 703-308-7135. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Jessica Harrison can be reached on 703-308-2217. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JESSICA HARRISON  
PRIMARY EXAMINER